

## 1 SENATE BILL NO. 480

2 INTRODUCED BY BLACK

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT DIVIDEND INCOME IS INCLUDED IN  
5 MONTANA ADJUSTED GROSS INCOME REGARDLESS OF WHETHER DIVIDEND INCOME IS INCLUDED  
6 IN FEDERAL ADJUSTED GROSS INCOME; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN  
7 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 **Section 1.** Section 15-30-111, MCA, is amended to read:

12 **"15-30-111. (Temporary) Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal  
13 income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62,  
14 as that section may be labeled or amended, and in addition includes the following:

15 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other  
16 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana  
17 under federal law;

18 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26  
19 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred  
20 to in subsection (1)(a)(i);

21 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a  
22 reduction of Montana income tax liability;

23 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue  
24 Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

25 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

26 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the  
27 amount recovered reduced the taxpayer's Montana income tax in the year deducted; ~~and~~

28 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of  
29 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution  
30 of the same estate or trust for the same tax period; and

1           (g) EXCEPT FOR EXEMPT-INTEREST DIVIDENDS DESCRIBED IN SUBSECTION (2)(A)(II), for tax years commencing  
2 after December 31, 2002, the amount of any dividend, to the extent that the dividend is not included in federal  
3 adjusted gross income.

4           (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or  
5 amended, adjusted gross income does not include the following, which are exempt from taxation under this  
6 chapter:

7           (a) (i) all interest income from obligations of the United States government, the state of Montana, a  
8 county, municipality, or district, or other political subdivision of the state and any other interest income that is  
9 exempt from taxation by Montana under federal law;

10           (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26  
11 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred  
12 to in subsection (2)(a)(i);

13           (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and  
14 including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

15           (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income  
16 received as defined in 15-30-101;

17           (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

18           (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
19 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in  
20 excess of \$30,000 as shown on the taxpayer's return;

21           (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity  
22 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in  
23 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000  
24 as shown on their joint return;

25           (d) all Montana income tax refunds or tax refund credits;

26           (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

27           (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by  
28 section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on  
29 January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide  
30 food, beverage, or lodging;

- 1 (g) all benefits received under the workers' compensation laws;
- 2 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the  
3 employee under federal law;
- 4 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a  
5 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 6 (j) principal and income in a medical care savings account established in accordance with 15-61-201  
7 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a  
8 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 9 (k) principal and income in a first-time home buyer savings account established in accordance with  
10 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time  
11 purchase of a single-family residence;
- 12 (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family  
13 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated  
14 beneficiary;
- 15 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the  
16 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 17 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of  
18 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution  
19 of the same estate or trust for the same tax period;
- 20 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch  
21 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction  
22 is not provided for federal income tax purposes; and
- 23 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income  
24 pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the  
25 child and taxpayer meet the filing requirements in 15-30-142.
- 26 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall  
27 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as  
28 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election  
29 is effective.
- 30 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business

1 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38  
2 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to  
3 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made  
4 in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small  
5 business corporation, the deduction must be made to determine the amount of income or loss of the partnership  
6 or small business corporation.

7 (5) Married taxpayers filing a joint federal return who are required to include part of their social security  
8 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal  
9 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement  
10 benefits when they file separate Montana income tax returns. The federal base must be split equally on the  
11 Montana return.

12 (6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end  
13 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income  
14 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is  
15 absent from work due to the disability. If the adjusted gross income before this exclusion and before application  
16 of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal  
17 amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If  
18 eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000  
19 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this  
20 subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by  
21 reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

22 (7) Married taxpayers who file a joint federal return and who make an election on the federal return to  
23 defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA,  
24 pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana  
25 income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the  
26 same time period. The deferred amount must be attributed to the taxpayer making the conversion.

27 (8) An individual who contributes to one or more accounts established under the Montana family  
28 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the  
29 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000,  
30 for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions

1 made by the spouses as being made by each spouse. The reduction in adjusted gross income under this  
 2 subsection applies only with respect to contributions to an account of which the account owner, as defined in  
 3 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or  
 4 stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of  
 5 contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of  
 6 contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch.  
 7 262, L. 2001.)

8 **15-30-111. (Effective on occurrence of contingency) Adjusted gross income.** (1) Adjusted gross  
 9 income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal  
 10 Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the  
 11 following:

12 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other  
 13 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana  
 14 under federal law;

15 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26  
 16 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred  
 17 to in subsection (1)(a)(i);

18 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a  
 19 reduction of Montana income tax liability;

20 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue  
 21 Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

22 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

23 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the  
 24 amount recovered reduced the taxpayer's Montana income tax in the year deducted; ~~and~~

25 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of  
 26 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution  
 27 of the same estate or trust for the same tax period; and

28 (g) EXCEPT FOR EXEMPT-INTEREST DIVIDENDS DESCRIBED IN SUBSECTION (2)(A)(II), for tax years commencing  
 29 after December 31, 2002, the amount of any dividend, to the extent that the dividend is not included in federal  
 30 adjusted gross income.

1 (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or  
2 amended, adjusted gross income does not include the following, which are exempt from taxation under this  
3 chapter:

4 (a) (i) all interest income from obligations of the United States government, the state of Montana, a  
5 county, municipality, or district, or other political subdivision of the state and any other interest income that is  
6 exempt from taxation by Montana under federal law;

7 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26  
8 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred  
9 to in subsection (2)(a)(i);

10 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and  
11 including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

12 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income  
13 received as defined in 15-30-101;

14 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

15 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
16 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in  
17 excess of \$30,000 as shown on the taxpayer's return;

18 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity  
19 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in  
20 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000  
21 as shown on their joint return;

22 (d) all Montana income tax refunds or tax refund credits;

23 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

24 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by  
25 section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on  
26 January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide  
27 food, beverage, or lodging;

28 (g) all benefits received under the workers' compensation laws;

29 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the  
30 employee under federal law;

- 1 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a  
2 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 3 (j) principal and income in a medical care savings account established in accordance with 15-61-201  
4 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a  
5 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 6 (k) principal and income in a first-time home buyer savings account established in accordance with  
7 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time  
8 purchase of a single-family residence;
- 9 (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family  
10 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated  
11 beneficiary;
- 12 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the  
13 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
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15 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution  
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- 17 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch  
18 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction  
19 is not provided for federal income tax purposes;
- 20 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income  
21 pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the  
22 child and taxpayer meet the filing requirements in 15-30-142.
- 23 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or  
24 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303.
- 25 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall  
26 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as  
27 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election  
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1 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to  
2 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made  
3 in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small  
4 business corporation, the deduction must be made to determine the amount of income or loss of the partnership  
5 or small business corporation.

6 (5) Married taxpayers filing a joint federal return who are required to include part of their social security  
7 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal  
8 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement  
9 benefits when they file separate Montana income tax returns. The federal base must be split equally on the  
10 Montana return.

11 (6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end  
12 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income  
13 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is  
14 absent from work due to the disability. If the adjusted gross income before this exclusion and before application  
15 of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal  
16 amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If  
17 eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000  
18 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this  
19 subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by  
20 reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

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28 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000,  
29 for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions  
30 made by the spouses as being made by each spouse. The reduction in adjusted gross income under this

1 subsection applies only with respect to contributions to an account of which the account owner, as defined in  
2 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or  
3 stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of  
4 contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of  
5 contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch.  
6 262, L. 2001.)"

7

8 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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10 NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the  
11 meaning of 1-2-109, to tax years commencing after December 31, 2002.

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- END -